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ISSUED TO ATTORNEY

FILED
05 AUG 18 PM 12:27
NORTHERN DISTRICT OF OHIO
TOLEDO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Dan G. Christy
18145 Gipe Road
Ney, Ohio 43549,

Plaintiff,

vs.

Continental Tire North America, Inc.
927 S. Union Street
Bryan, Ohio 43506,

Defendant.

Case No. **3:05CV7341**
JUDGE JAMES G. CARR

COMPLAINT; JURY DEMAND
ENDORSED HEREON

COUNT I
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
42 U.S.C. SECTION 12112(d)(4)(A)

1. Plaintiff is an "employee" as that term is defined in the Americans With Disabilities Act, Section 42 U.S.C. Section 12111(1).

2. Defendant is a "covered entity" as that term is defined in the Americans With Disabilities Act, Section 42 U.S.C. Section 12111(2).

3. Plaintiff has been employed by defendant since September 1987.
4. On or about June 22, 2004, defendant required plaintiff to submit to a medical examination.
5. The medical examination was not job-related and consistent with business necessity.
6. Plaintiff has been damaged as a result of defendant's actions as set out above, including suffering emotional distress.
7. Defendant acted maliciously.
8. Plaintiff filed a Charge Of Discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) on March 3, 2005. A true copy of said Charge Of Discrimination is attached to this Complaint as Exhibit A and is made a part of it.
9. The EEOC issued a Notice Of Right To Sue on June 15, 2005. A true copy of said Notice is attached to this Complaint as Exhibit B and is made a part of it.

COUNT II
INVASION OF PRIVACY
OHIO COMMON LAW TORT CLAIM

10. Plaintiff realleges paragraphs 3 through 7 of this Complaint as if fully set forth verbatim.
11. Defendant's actions in requiring plaintiff to submit to a medical examination constituted a wrongful intrusion into plaintiff's private activities.
12. This wrongful intrusion was done in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.
13. The wrongful intrusion caused suffering, shame and humiliation to plaintiff.

COUNT III
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
DISCRIMINATION BASED ON DISABILITY/PERCEIVED AS DISABLED

14. Plaintiff realleges paragraphs 3 and 7 of this Complaint as if fully set forth verbatim.
15. Plaintiff is a disabled person.
16. Defendant perceives plaintiff as a disabled person.
17. Plaintiff's doctor placed him on certain work-related restrictions in June 2004, and that these restrictions were to expire on August 9, 2004.
18. Defendant required plaintiff to be examined by its own doctor on July 12, 2004.
19. Plaintiff was on vacation from August 9 to August 22, 2004.
20. Upon plaintiff's return to work on August 23, 2004, defendant refused to lift the work-related restrictions, thus prohibiting plaintiff from working any overtime.
21. Plaintiff was denied overtime from August 23, 2004 until some time in October 2004.
22. Defendant refused to lift plaintiff's work-related restrictions and denied plaintiff overtime as set out above due to the fact that plaintiff is a disabled person and also due to the fact that defendant perceived plaintiff as disabled.
23. Plaintiff has been damaged as a result of defendant's actions as set out above, including lost wages and other benefits as well as suffering emotional distress.
24. Plaintiff filed a Charge Of Discrimination with the Ohio Civil Rights Commission (OCRC) and the EEOC on August 24, 2004. A true copy of said Charge Of Discrimination is attached to this Complaint as Exhibit C and is made a part of it.
25. The EEOC issued a Notice Of Right To Sue on May 19, 2005. A true copy of said Notice is attached to this Complaint as Exhibit D and is made a part of it.

COUNT IV
VIOLATION OF OHIO REVISED CODE SECTION 4112.99
DISCRIMINATION BASED ON DISABILITY/PERCEIVED AS DISABLED

26. Plaintiff reallages paragraphs 14 through 23 of this Complaint as if fully set forth verbatim.

WHEREFORE,

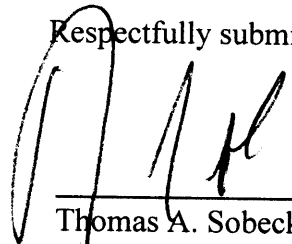
Plaintiff demands judgment in regards to Counts I and II, as to each count, as follows:

1. Compensatory damages in the amount of \$250,000.00;
2. Punitive damages in the amount of \$500,000.00;
3. Attorney's fees;
4. Prejudgment interest, postjudgment interest, and costs; and
5. Such other and further relief as this Court deems just.

Plaintiff demands judgment as to Counts III and IV, as to each count, as follows:

1. Recovery of back pay, which is the lost overtime;
2. Compensatory damages in the amount of \$250,000.00;
3. Punitive damages in the amount of \$500,000.00;
4. Attorney's fees;
5. Prejudgment interest, postjudgment interest, and costs; and
6. Such other and further relief as this Court deems just.

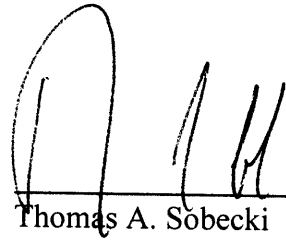
Respectfully submitted,



Thomas A. Sobecki (0005210)
520 Madison Avenue, Suite 811
Toledo, Ohio 43604
Telephone: 419-242-9908
Fax: 419-242-9937
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all counts.



Thomas A. Sobecki

DISMISSAL AND NOTICE OF RIGHTS

To: **Dan G. Christy**
18145 Gipe Rd.
Ney, OH 43549

From: **Cleveland District Office**
1660 West Second Street
Suite 850
Cleveland, OH 44113

☐ On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

22A-2005-01822**Legal Duty Officer****(216) 522-7445****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- ☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -*(See the additional information attached to this form.)*

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosure(s)


James R. Neely, Jr.,
Acting Director

15 JUN 2005*(Date Mailed)*

cc: **Attorney Constance A. Snyder**
405 Madison Avenue
Suite 2020
Toledo, Ohio 43604

Attorney Thomas A. Sobecki
520 Madison Avenue
Suite 811
Toledo, Ohio 43604

EXHIBIT B

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY☒ FEPA
☒ EEOC**CHARGE NUMBER**B2082304 (28660) 082404
22A A4 03433**Ohio Civil Rights Commission and Equal Employment Opportunity Commission****NAME**

Dan G. Christie

HOME TELEPHONE (Include Area Code)
(419) 658-2822**STREET ADDRESS**

18145 Gipe Road

CITY

Ney,

STATE ZIP

Ohio 43549

DATE OF BIRTH**NAMED BELOW IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME.****NAME**

Continental Tire

NO. OF EMPLOYEES, MEMBERS
+15**TELEPHONE (Include Area Code)**
(419) 636-4271**STREET ADDRESS**

927 South Union Street

CITY

Bryan,

STATE ZIP

Ohio 43506

COUNTY

Williams

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box (es))☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ RETALIATION
☐ AGE ☒ DISABILITY ☐ OTHER (Specify) _____**DATE DISCRIMINATION TOOK PLACE**

EARLIEST (ADEA/EPA)

LATEST (ALL)

August 23, 2004

☐ Continuing Action**THE PARTICULARS ARE (IF ADDITIONAL SPACE IS NEEDED, ATTACH EXTRA SHEET(S))****Check box if either or both of the following are applicable:**☐ (Disability Only) I SUFFER FROM
I AM A QUALIFIED DISABLED PERSON AS DEFINED BY SECTION 4112.01(A)(13) OF THE OHIO REVISED CODE. I CAN SAFELY AND SUBSTANTIALLY PERFORM THE JOB DUTIES
IN QUESTION.☐ (Age Only) "I HAVE NOT COMMENCED ANY ACTION UNDER SECTIONS 4101.17 OR 4112.02 (N) OF THE REVISED CODE WITH RESPECT TO THE SUBJECT MATTER OF THIS
AFFIDAVIT. I UNDERSTAND THAT UPON THE FILING OF THIS CHARGE AFFIDAVIT WITH THE OHIO CIVIL RIGHTS COMMISSION, I AM BARRED FROM INSTITUTING ANY SUCH
CIVIL ACTION AND THAT ANY MONETARY AWARD OR FINANCIAL BENEFIT I MAY RECEIVE MAY BE LIMITED TO BACK PAY AND/OR RESTORATION OF EMPLOYMENT FRINGE
BENEFITS AND MAY NOT INCLUDE OTHER DAMAGES I MAY BECOME ENTITLED TO AS A RESULT OF SUCH CIVIL ACTION."

1. I am a person with a perceived disability who respondent has employed since 1987. My current position is in Maintenance. On August 23, 2004 I have been denied over-time and the opportunity to be released from my work restrictions.

2. Chuck Kruger, Human Resources told me I was denied over time because of their physician's restrictions.

3. I believe I have been unlawfully discriminated against (denied overtime& placed on restrictions) because of my perceived disability inasmuch as:

a. The action was taken by respondent, at least in part, because I am perceived to be disabled. In June 2004, my physician placed my on temporary restrictions (40-hour week) because of my sleep apnea/anxiety. At the same time respondent sent me to their doctor, Dr. Kestenbaum, Clinical Psychologist to be evaluated because they believe I was lying to get the weekend off.

b. On August 23, 2004, my physician released me to full duty, no restrictions. However, respondent's physician, Dr. Kestenbaum has recommended that I remain on my restrictions until I received further treatment. I am aware that Dr. Kestenbaum told respondent that he agreed with my physician no restrictions and that he would send his written report.

c. On August 23, 2004 I was told I could not work any over time until I got Psychological treatment within two weeks and if I did not I would be disqualified from Maintenance, laid off or terminated.

d. I can safely and substantially perform the essential functions of my job in questions with or without accommodations

RECEIVED
OCC-TOLEDO

7/24/10/11/10/12/13

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE READ THE ABOVE CHARGE AND THAT IT IS TRUE TO THE
BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. I WILL ADVISE THE AGENCY(IES) IF I CHANGE MY ADDRESS
OR TELEPHONE NUMBER AND I WILL COOPERATE FULLY WITH THEM IN THE PROCESSING OF MY CHARGE IN
ACCORDANCE WITH THEIR PROCEDURES.**NOTARY OR OHIO CIVIL RIGHTS COMMISSION REPRESENTATIVE**Subscribed and sworn to before me on this 24 day of August 2004
Ephelia M. Phillips
Signature(X) *Dan Christie*
Charging Party Signature8-24-03
Date

EXHIBIT C

T-2-1

DISMISSAL AND NOTICE OF RIGHTS

To: **Dan Christy**
18145 Gipe Rd.
Ney, OH 43549

From: **Cleveland District Office**
1660 West Second Street
Suite 850
Cleveland, OH 44113

☐ On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

22A-2004-03433**Legal Unit Duty Officer****(216) 522-7445****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

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- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
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- ☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
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- ☐ Other (briefly state)

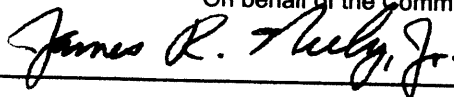
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(See the additional information attached to this form.)

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On behalf of the Commission



James R. Neely, Jr.,
Acting Director

19 MAY 2005

(Date Mailed)

Enclosure(s)

cc: **Charles Kruger**
Human Resources Manager
Continental Tire North America, Inc.
927 S. Union St.
Bryan, OH 43506

Constance A. Snyder
Attorney at Law
1119 Adams Street
Second Floor
Toledo, OH 43624

EXHIBIT D